

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SERVICE EMPLOYEES INTERNATIONAL
UNION,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-5-M

Petition for Withdrawal

PERB Order No. Ad-329-M

November 25, 2003

Appearances: Tosdal, Levine, Smith, Steiner & Wax by Jon Y. Vanderpool and Service Employees International Union by Rebecca Miller, Executive Director, for Service Employees International Union; Liebert, Cassidy & Whitmore by Nate J. Kowalski, Attorney, for County of Riverside.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on petition of Service Employees International Union (SEIU) to withdraw the instant matter without prejudice.

By letter dated September 26, 2003 to the Appeals Office, SEIU stated that it is withdrawing without prejudice unfair practice case number LA-CE-5-M against the County of Riverside (County). The Appeals Office transmitted the letter to the Board for disposition. In the letter, SEIU did not provide any justification for its statement, which was framed as a statement and not as a request.

In the proposed decision, the administrative law judge (ALJ) held that the County unilaterally changed its policy regarding the grievability of promotions under the parties' memorandum of understanding and ordered the County to cease and desist from failing to meet

and confer in good faith, from unilaterally changing its grievance policy, and from refusing to process grievances regarding promotions. The ALJ also ordered the County to process the grievance filed by Carmella Bea MacArthur and to post a notice to employees of the Board's order. The County filed exceptions to the ALJ's proposed decision and SEIU filed a response to the County's exceptions.

The Board has typically permitted withdrawal of appeals when that withdrawal is in the best interests of the parties and is consistent with the purposes of the Meyers-Milias-Brown Act (MMBA).¹ (See e.g., State of California (Department of Corrections) (2002) PERB Decision No. 1496-S; Newark Unified School District (2002) PERB Decision No. 1499.) Here the Board does not find that withdrawal is in the best interests of the parties or consistent with the MMBA. First, SEIU has not provided any justification for its withdrawal from the case. Second, as SEIU has received a favorable decision from the ALJ in this matter, it cannot simply extinguish the case. The matter is on the Board's docket on appeal from the County. As set forth in PERB regulations, the County has exercised its right to file exceptions and bring this matter before the Board itself for disposition.² SEIU has not cited any legal precedent for expunging that right. Finally, withdrawal without prejudice is not consistent with the purposes of the MMBA. MMBA section 3500 provides, in pertinent part:

(a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding

¹MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq. See PERB Regulation 32300, 32305, and 32310 regarding the filing of exceptions to proposed decisions and responses to exception. Contrast PERB Regulation 32625 regarding withdrawal of the charge at various levels of the Board proceedings, up through the hearing process. There are no regulations addressing the withdrawal of a case at this stage of the proceedings.

wages, hours, and other terms and conditions of employment between public employers and public employee organizations. . . . This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

Allowing SEIU's withdrawal without prejudice would not result in final resolution of this dispute. SEIU's withdrawal of the case therefore would not assist in establishing "uniform and orderly methods of communication between employees and the public agencies by which they are employed" or "promot(e) full communications between public employers and employees" as required by MMBA section 3500(a).

In conclusion, the Board finds that withdrawal does not promote the best interests of the parties nor is it consistent with the purposes of the MMBA and accordingly denies SEIU's petition to withdraw this case.

ORDER

The request by Service Employees International Union for withdrawal of Case No. LA-CE-5-M is hereby DENIED WITHOUT PREJUDICE.

Members Baker and Neima joined in this Decision.